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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/830,001	04/23/2004	Michaela Kohut	P25129	7651
7055 7590 12/21/2009 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER BROOKS, KRISTIE LATRICE				
ART UNIT		PAPER NUMBER		
1616				
NOTIFICATION DATE		DELIVERY MODE		
12/21/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
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Office Action Summary

Application No.

10/830,001

Applicant(s)

KOHUT ET AL.

Examiner

KRISTIE L. BROOKS

Art Unit

1616

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 and 40-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-37 and 40-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of Application

1. Claims 1-37 and 41-48 are pending.
2. Receipt and consideration of Applicants remarks/arguments submitted on October 27, 2008 is acknowledged.
3. Rejections not reiterated from the previous Office Action are hereby withdrawn. The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.
4. Upon further consideration by the Examiner, the final rejection mailed June 25, 2009 has been withdrawn and a non-final rejection is presented below.

New Grounds of Rejection

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-16,18-32,34-37, and 40-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler et al. (US 5,720,961) in view of Gordon et al. (US 5,977,039), and Mercier et al. (US 7,488,471).

Applicant claims a cosmetic or dermatological cleansing emulsion comprising:

- (a) from about 2 % to about 17 % by weight of at least one of sodium laureth sulfate and sodium myreth sulfate;
- (b) from about 0.20 % to about 0.74 % by weight of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof;
- (c) from about 42 % to about 51% by weight an oil phase comprising (i) from about 25 % to about 50 % by weight of a paraffin oil, (ii) from about 0.5 % to about 25 % by weight one or more oils having a polarity of from about 5 to about 50 mN/m; wherein the emulsion has a viscosity ranging from 500 to 3,500mPa s.

Applicant also claims a method of cleansing the skin comprising the application of composition described above onto the skin.

Determination of the scope and content of the prior art
(MPEP 2141.01)

Fowler et al. teach a personal care cleansing composition comprising (a) 0.1 to 20% of insoluble particles, (b) 0.05 to about 40% of a surfactant selected from anionic, cationic amphoteric, nonionic, and zwitterionic surfactants, and mixtures thereof, from 0 to 50% of an emollient, and from 20 to 99.85% water (see the abstract, column 2 lines 34-48, and the claims). Examples of anionic surfactants are alkyl ether sulfates of the formula $RO(C_2H_4O)_xSO_3M$ where R is an alkyl with 10 to 30 carbon atoms, and x is from 1 to about 10 (e.g. sodium laureth sulfate, sodium myreth sulfate) (see column 7 lines 27-45, column 10 lines 23-33 and Example 3). Examples of emollients include lipid materials, polar lipids, silicones and hydrocarbons such as mineral oil, petrolatum, isopropyl palmitate, isopropyl myristate, lanolin, fatty alcohol esters, alcohol sorbitan esters, etc. (see column 10 lines 35-67, column 11, and column 12 lines 1-67). The emollients are believed to provide a cleansing benefit by acting as a solvent to help dissolve oils and other oily debris during the cleansing process (see column 10 lines 35-42). The compositions can include additional materials such as actives (e.g. antiperspirants, antimicrobials, etc.), thickeners, etc. (see column 13 lines 19-42). Examples of thickeners include acrylate/C10-30 alkyl acrylate crosspolymers in the amount of 0.20% (see column 13 lines 49-53 and Example 2). The cleanser can be prepared into a variety of forms including emulsions, creams, gels, bars, foams, mousses, lathers, etc (see column 2 lines 48-55 and the Examples). Examples 2, 3 and 5 utilize mineral oil, fatty alcohols, cetyl alcohol, and acrylate cross polymer (thickener).

Fowler also teaches methods of personal cleansing comprising applying the composition to the skin or hair to be cleansed (see column 14 lines 34-55).

Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)

Fowler et al. do not teach the instantly claimed viscosity range (i.e. 500 to 3,500mPa s). Fowler et al. teach the use of polymeric thickeners but do not teach the instantly claimed amount of 0.3 to 0.74 % by weight.

Fowler et al. do not exemplify the instantly claimed amount of the paraffin oil (i) and polar oils (ii) in the cleansing composition.

These deficiencies are cured by the teachings of Gordon et al. and Mercier et al.

Gordon et al. teach personal care cleansing compositions comprising a cleansing and moisturizing liquid composition comprising a moisturizing phase (i.e. silicone oils, mineral oil, vegetable oil, mixtures etc.) and an aqueous phase comprising surfactants (i.e. anionic, cationic, nonionic, mixtures) (see the abstract, column 7 lines 32-60, and claim 1). The cleansing and moisturizing composition has a viscosity of from about 500cps to about 60,000 cps (e.g. 500 mPa to 60,000 mPa) (see column 8 lines 18-25). Polymeric thickeners may also be included (see column 9 lines 7-30).

Mercier et al. teach a cosmetic or pharmaceutical emulsion comprising oil phase, aqueous phase, and emulsifying system (see the abstract). Polymeric additives can be

incorporated into the aqueous phase of the emulsion in order to achieve desired viscosity or gel consistency (see column 4 lines 41-43). In general, a greater amount of polymeric additive will result in a greater viscosity (see column 4 lines 60-61). Examples include acrylate polymers in an amount ranging from 0.1 to 2.5% of the composition (see column 4 lines 48-61).

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

One of ordinary skill in the art would have been motivated to make the instant composition with a viscosity in the range of 500 to 3,500 mPa s because Fowler et al. teach that personal care compositions can contain a polymeric thickener (as disclosed in Example 2). It is known in the art that polymeric thickeners are added to the composition in an amount ranging from 0.1 to 2.5% by weight in order to modify the composition to the desired viscosity, as suggested by Gordon et al. and Mercier et al. Further, it is known in the art that cleansing compositions containing polymeric thickeners can be prepared with a viscosity ranging from 500cps to about 60,000 cps (e.g. 500 mPa to 60,000 mPa), as suggested by Gordon et al.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to make the instant composition with a viscosity in the range of 500 to 3,500 mPa s to because it is an obvious viscosity range that can be used in personal cleansing compositions. Further, it is merely routine optimization for

one of ordinary skill in the art to vary the viscosity of the composition, depending on the desired properties of the final product.

It is noted that Fowler et al. do not teach each specifically claimed amount of paraffin oil and polar oils. However, Fowler et al. do suggest that the emollient phase can be present in an amount up to 50% by weight and can contain polar lipids, nonpolar lipid material, and mixtures. Further, Fowler et al. exemplify the use of both polar (i.e. cetyl alcohol, stearyl alcohol) and a paraffin oil (i.e. mineral oil) in Example 5. Thus, it would have been obvious to one of ordinary skill in the art to utilize paraffin oil and polar oils in the amount instantly claimed and it is merely routine optimization for one of ordinary skill in the art to vary the amounts each oil present in order to achieve the most stable and effective composition.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the instant composition.

7. Claims 17 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fowler et al. (US 5,720,961) in view of Gordon et al. (US 5,977,039), Mercier et al. (US 7,488,471) and McLaughlin (US 2003/0133900).

Applicant claims a cosmetic or dermatological cleansing emulsion comprising:

(a) from about 2 % to about 17 % by weight of at least one of sodium laureth sulfate and sodium myreth sulfate;

(b) from about 0.20 % to about 0.74 % by weight of one or more polyacrylates selected from anionic homopolymers and anionic copolymers of at least one of acrylic acid, an alkylated acrylic acid and esters thereof;

(c) from about 42 % to about 51% by weight an oil phase comprising (i) from about 25 % to about 50 % by weight of a paraffin oil, (ii) from about 0.5 % to about 25 % by weight one or more oils having a polarity of from about 5 to about 50 mN/m; wherein the emulsion has a viscosity ranging from 500 to 3,500mPa s.

Applicant also claims a method of cleansing the skin comprising the application of composition described above onto the skin.

Determination of the scope and content of the prior art
(MPEP 2141.01)

Fowler et al. teach a personal care cleansing composition comprising (a) 0.1 to 20% of insoluble particles, (b) 0.05 to about 40% of a surfactant selected from anionic, cationic amphoteric, nonionic, and zwitterionic surfactants, and mixtures thereof, from 0 to 50% of an emollient, and from 20 to 99.85% water (see the abstract, column 2 lines 34-48, and the claims). Examples of anionic surfactants are alkyl ether sulfates of the formula $RO(C_2H_4O)_xSO_3M$ where R is an alkyl with 10 to 30 carbon atoms, and x is from 1 to about 10 (e.g. sodium laureth sulfate, sodium myreth sulfate) (see column 7 liners 27-45, column 10 lines 23-33 and Example 3). Examples of emollients include lipid materials, polar lipids, silicones and hydrocarbons such as mineral oil, petrolatum,

isopropyl palmitate, isopropyl myristate, lanolin, fatty alcohol esters, alcohol sorbitan esters, etc. (see column 10 lines 35-67, column 11, and column 12 lines 1-67). The emollients are believed to provide a cleansing benefit by acting as a solvent to help dissolve oils and other oily debris during the cleansing process (see column 10 lines 35-42). The compositions can include additional materials such as actives (e.g. antiperspirants, antimicrobials, etc.), thickeners, etc. (see column 13 lines 19-42). Examples of thickeners include acrylate/C10-30 alkyl acrylate crosspolymers in the amount of 0.20% (see column 13 lines 49-53 and Example 2). The cleanser can be prepared into a variety of forms including emulsions, creams, gels, bars, foams, mousses, lathers, etc (see column 2 lines 48-55 and the Examples). Examples 2, 3 and 5 utilize mineral oil, fatty alcohols, cetyl alcohol, and acrylate cross polymer (thickener).

Fowler also teaches methods of personal cleansing comprising applying the composition to the skin or hair to be cleansed (see column 14 lines 34-55).

Gordon et al. teach personal care cleansing compositions comprising a cleansing and moisturizing liquid composition comprising a moisturizing phase (i.e. silicone oils, mineral oil, vegetable oil, mixtures etc.) and an aqueous phase comprising surfactants (i.e. anionic, cationic, nonionic, mixtures) (see the abstract, column 7 lines 32-60, and claim 1). The cleansing and moisturizing composition has a viscosity of from about 500cps to about 60,000 cps (e.g. 500 mPa to 60,000 mPa) (see column 8 lines 18-25). Polymeric thickeners may also be included (see column 9 lines 7-30).

Mercier et al. teach a cosmetic or pharmaceutical emulsion comprising oil phase, aqueous phase, and emulsifying system (see the abstract). Polymeric additives can be incorporated into the aqueous phase of the emulsion in order to achieve desired viscosity or gel consistency (see column 4 lines 41-43). In general, a greater amount of polymeric additive will result in a greater viscosity (see column 4 lines 60-61). Examples include acrylate polymers in an amount ranging from 0.1 to 2.5% of the composition (see column 4 lines 48-61).

Ascertainment of the difference between the prior art and the claims
(MPEP 2141.02)

Fowler et al. teach the use of emollients but do not teach the instantly claimed emollients (i.e. soybean and almond oil).

This deficiency is cured by the teachings of McLaughlin.

McLaughlin teaches emollient skin conditioning cream compositions comprising an emollient material, surfactant, etc. (see the abstract). Examples of emollients include fatty acid esters, such as isopropyl myristate, caprylic triglyceride, soybean oil, almond, oil, coconut oil, etc. (see page 3 paragraph 15).

Finding of prima facie obviousness

Rational and Motivation (MPEP 2142-2143)

One of ordinary skill in the art would have been motivated to use the instant claimed emollients (i.e. soybean and almond oil) because McLaughlin teaches that soybean and almond oil are known emollients for use in skin care compositions.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to use the instant claimed emollients (i.e. soybean and almond oil) because it is an obvious variation of emollients that are capable of use in skin care compositions.

Therefore, the claimed invention would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made because the prior art is fairly suggestive of the instant composition.

Response to Arguments

Applicant's arguments with respect to claims 1-37 and 40-48 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE L. BROOKS whose telephone number is (571)272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616